

**ST 95-39**

**Tax Type:**

**Sales Tax**

**Issue:**

**Revocation of Certificate of Registration**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC COMPANY, INC.,**

Taxpayer

No.  
Revocation Proceeding

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Phillip H. Hamilton of the Farrell Law Firm, for the respondent, ABC COMPANY, Inc.

**Synopsis:**

This cause came to be heard as a set matter, pursuant to notice, for the purpose of revoking the certificate of registration of ABC COMPANY, Inc., under authority granted by 35 ILCS 120/2(b). The grounds for the revocation as stated on the Notice of Hearing, entered of record as Department's Group Exhibit No. 1, are that taxpayer failed "to pay on demand amounts due from JOHN DOE from the portion of the proceeds of your purchase of business assets required to be withheld by Bulk Sales Stop Order Number B-44823". Following a hearing and consideration of evidence in this case, it is my recommendation that the issue be decided in favor of the Department.

**Findings of Fact:**

1. The Department's prima facie case was established by the entry into evidence, without objection, of Department's group exhibit No. 1, consisting of the Notice of Hearing and Letter of Certification of amounts owed.

2. Prior to March 2, 1994, JOHN DOE conducted retail business in the State of Illinois as a sole proprietorship and was subject to the provisions of the Retailers' Occupation Tax Act. (Tr. p. 8 - representation of counsel)

3. As a result of conducting said business, Mr. DOE accumulated a debt liability of approximately \$185,000.00 to the State of Illinois for unremitted taxes due under the Retailers' Occupation Tax Act. (Tr. pp. 6-7; stipulation of counsel)

4. On March 2, 1994, a corporation known as ABC COMPANY, Inc., was created by JANE DOE, wife of JOHN DOE, for the purpose of conducting a retail business. JANE DOE is sole director and President of the corporation. (Tr. p. 8; TP Ex. No. 10)

5. On or about March 9, 1994, the assets of the sole proprietorship owned and operated by JOHN DOE, were transferred in toto to ABC COMPANY, Inc., in exchange for 1000 shares of stock. (Tr. p. 9 - representation of counsel)

6. The assets of the sole proprietorship transferred to ABC COMPANY, Inc., consisted of cash, inventory, accounts receivable and miscellaneous items valued at \$13,223.94. (Tr. p. 22)<sup>1</sup>

7. On the same day, March 9, 1994, JOHN DOE made a gift of the 1000 shares of capital stock received, to his wife, ABC COMPANY, Inc. (Tr. p. 9 - representation of counsel; TP ex. No. 10)

8. No cash, money or other items of value were exchanged between the two parties during the transfer of assets other than the 1000 shares of capital stock. (Tr. p. 9 - representation of counsel)

9. The transferee, ABC COMPANY, Inc., notified the Department of Revenue of the sale or purchase of assets on or about October 24, 1994, although the need for such notification was disputed. (TP ex. Nos. 4; 7)

10. October 24, 1994, the date of notification of sale, is more than 10 days beyond March 9, 1994, which was the date of the transfer of assets.

11. As a result of the notification of the transfer, the Department of Revenue issued Bulk Sales Stop Order No. 62413 on or about November 2, 1994 to ABC COMPANY, Inc. (TP ex. No. 5)

12. As a follow-up to the issuance of the Bulk Sales Stop Order, the Department of Revenue on or about November 3, 1994, issued a Notice and Demand to ABC COMPANY, Inc. for the payment of \$183,575.65. (TP ex. No. 5)

13. JOHN DOE advised the Department of Revenue by correspondence dated November 14, 1994, that he could not pay the assessed liability and requested a payment plan. (Tr. pp. 23-24; TP ex. No. 6)

14. Although no payment plan was ever consummated, nor any formal understanding made between JOHN DOE and the Department of Revenue, he nonetheless claims to be sending \$300 per month to the Department towards his outstanding tax liability. (Tr. pp. 24-27)

15. Counsel for the taxpayer stipulated that there is no issue as to the failure to pay tax liabilities or the amount thereof with respect to JOHN DOE. (Tr. pp. 6-7)

16. No procedural, jurisdictional or substantive defenses are raised by the taxpayer other than the argument that the "bulk sale" transfer requirements of the Retailers' Occupation Tax Act do not apply to the instant transaction.

### **Conclusions of Law:**

This case proceeds under the operative statute, 35 ILCS 120/2b, which states in relevant part:

The Department may, after notice and a hearing as provided herein, revoke the certificate of registration of any person who violates any of the provisions of this Act...

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<sup>1</sup> The amount specified was derived from the testimony of JOHN DOE and no other source. Taxpayer's exhibit 4, which contains a listing of assets and value of ABC COMPANY, Inc., shows a much greater net worth. This creates a question as to whether the statement as to the value of the amount transferred is credible under the circumstances.

Within its encompassing terms, we must next look to the provisions of the section of the Act which deals with sales or transfers in the nature of what has transpired in this case. Under 35 ILCS 120/5j, the Act specifies as follows:

If any taxpayer, outside the course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such asset shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department... If the purchaser or transferee fails to file the above described notice of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable for the amount owed hereunder by the seller or transferor to the Department up to the amount of the reasonable value of the property acquired by the purchaser or transferee... (emphasis added)

The above stated law therefore places an affirmative duty upon the transferee of property, such as that here, to notify the Department of such transfer within a specified period of time. The consequence of failure to notify is that the transferee becomes liable for the amount owed by the transferor up to the value of the property transferred.

Applying these requirements to the case at hand, it appears quite clear that with the failure of ABC COMPANY, Inc. to file its notice of transfer within the requisite time period, it became liable to the Department for the established debt of JOHN DOE incurred in his sole proprietorship. Although counsel for the taxpayer argues that the notification requirement of this section does not apply since no cash or other value was received for the transfer other than capital stock, I find such argument unconvincing. The language of the Act specifically directs that notice be given when there is a transfer of a stock of goods, etc., which, by admission, occurred. There is no terminology in the statute that even hints that such transfer as may take place, must be in exchange for cash or other items of value. Accordingly, I reject the defense as posed.

A caveat which does have some significance, however, is that the liability of ABC COMPANY, Inc., only extends to the limit of the value of the items transferred. While there is some confusion in the record as to what figure this might be, it is at least equal to \$13,223.94. (Tr. p. 22)<sup>2</sup> ABC COMPANY, Inc.,

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<sup>2</sup> The value of the assets transferred could possibly be as high as \$100,000.00 as shown on taxpayer's Exhibit No. 4.

is not liable for the full \$185,000 stated on the Department's Letter of Certification, (Dept. Ex. No. 1) which is the amount of debt allotted to JOHN DOE.

Nonetheless, ABC COMPANY, Inc. does have a minimum liability established by the evidence presented here, and no evidence has been presented which shows or tends to show that the corporation has met that liability. As such, they are in violation of the Act and good cause does exist to revoke their certificate for such violation.

It is therefore recommended, based on the evidence of record, that the certificate of registration of ABC COMPANY, Inc., be revoked for failure to comply with and being in violation of the provisions of 35 ILCS 120/5j.<sup>3</sup>

Respectfully submitted:

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Richard L. Ryan  
Administrative Law Judge

RLR  
12/14/95

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<sup>3</sup> The findings here in no way affect the liability of JOHN DOE, which remains as established and collectible from the individual.